*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.12767 of 2004

%5.10.2004

£ R. Manjusha Kashyap, being minor, rep. by father and natural guardian Dr. R. Satya Prakasam

…Petitioner

Vs.

$ The Principal Secretary to Government, Education Department, Govt. of A.P., and four others.

… Respondents

!For the petitioner …Mr. M. Subrahmanyam

^For the Respondent Nos.1 to 3 …G.P. for Education

For the Respondent No.4 …Mr.A. Rajasekhar Reddy

For the Respondent No.5 …Smt.Y. Padmavathi

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1992 SC 435
2. 2004 AIR SCW 3888 (Para 57)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 12767 of 2004

Between:

R.Manjusha Kashyap, being Minor, rep.by father and natural guardian,
Dr. R. Satya Prakasam, R/o.12-648 SLV Complex, Old Bus Stand,

Dharmavaram, Ananthapur District.

..... PETITIONER

AND

1 The Principal Secretary to Government, Education Department,

Government of A.P., Secretariat, Hyderabad.
2 Zilla Sainik Welfare officer, Govt. of A.P., Ananthapur.
3 The Director, Sainik Welfare Govt. of A.P., Department of Sainik

Welfare, MJ Road, Namaplly, Hyderabad.
4 Kendriya Sainik Board, Govt. of India, Ministry of Defence,

West Block-IV, Wing No.5, R.K.Puram, New Delhi – 66.
5 The Vice Chancellor, NTR University of Health Sciences,

A.P., Vijayawada – 520 008.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of mandamus declaring the G.O.Ms.No.192 Education (E.C.2) Department, dated 26-08-1993 issued by the 1st respondent as illegal and contrary to the admission policy of the Central Government for admission into MBBS/BDS courses for the children of Army personnel.

Counsel for the Petitioner: MR.M.SUBRAHMANYAM

Counsel for the Respondent Nos.1 to 3: THE ASSISTANT GOVERNMENT PLEADER FOR MEDICAL AND HEALTH representing GP FOR EDUCATION

Counsel for the Respondent No.4: MR.A.RAJASEKHAR REDDY, S.C. FOR CENTRAL GOVERNMENT

Counsel for the Respondent No.5: SMT.Y. PADMAVATHI, S.C. FOR NTR UNIVERSITY

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12767 OF 2004

ORDER:

The petitioner appeared for Engineering Agricultural and Medical Common Entrance Test – 2004 (EAMCET- 2004). She secured 021234 rank in medical stream. Pursuant to the notification issued by N.T.R. University of Health Sciences ('University' for brevity), fifth respondent herein, she applied for medical seat claiming reservation under 1% seats reserved for Ex-servicemen as per Rule 9(3) of the A.P.Unaided Non-Minority Professional Institutions (Regulations of Admissions into Under- Graduate Medical and Dental Professional Courses) Rules, 2004 (hereafter called, the Rules) which were promulgated vide G.O.Ms.No.184, dt.30.6.2004. Along with her application, she enclosed a certificate issued by second respondent to the effect that petitioner's father is an Ex-serviceman having served Indian Army as Regimental Medical Officer from 1977 to 1982. Second respondent issued the certificate as per the executive instructions issued by the Government of Andhra Pradesh in G.O.Ms.No.192, dt.26.8.1993. The petitioner alleges that though petitioner's father produced commendation certificate issued by the Chief of Army Staff and said certificate is falling under Priority (3) under G.O.Ms.No.192, the same was refused.

The case of the petitioner is that initially there were eleven categories under Priority (3) and commendation certificate issued by the Chief of Army comes under category (xii) of Priority (3). Second respondent issued the certificate to the petitioner as falling under Priority (4). It is the case of the petitioner that when she appeared for counselling, the University considered her as one of the candidates under Priority (4), but refused to consider her case under Priority (3) by reason of which she did not come up for selection. The petitioner contends that in the application form for Medical, Dental and Engineering Courses for wards of defence personnel, category 12 i.e., "other award winner (does not include service medal)" was included and as she falls under the said category, the denial of consideration under Priority (3) is illegal and arbitrary. Therefore, she filed the Writ Petition to declare G.O.Ms.No.192, dt.26.8.1993 as illegal and contrary to admission policy of the Government of India in relation to admission of children of armed personnel in medical courses.

Along with Writ Petition the petitioner also filed a miscellaneous application being W.P.M.P.No.16293 of 204 for interim direction to the University to consider the case of the petitioner for admission into MBBS course under category (xii) of Priority (3). This Court by order dt.22.7.2004 dismissed the said application on the ground

that no direction can be issued in favour of petitioner as prayed for, as the gallantry awards do not include the service medal to claim priority for securing admission. The petitioner again filed another application being W.P.M.P.No.20046 of 2004 praying for a direction to the University to consider her case for admission into MBBS course under category (xii) in order of merit in Priority (3) in the quota of seats earmarked for children of armed personnel. In the affidavit accompanying the said application, it is alleged that the petitioner's father was awarded two commendation certificates by the Chief of Army Staff on 15.8.1978 and on 15.8.1981, that the second certificate was for his courageous rescuing of an unconscious solder from the NEFA Jungles ignoring the threat of NAGA hostiles attack at night amidst torrential rain, that subsequent to filing the writ petitioner the petitioner's father received a clarification from Kendriya Sainik Board, Government of India in the Ministry of Defence – fourth respondent; to the effect that the commendation certificates have been made part of gallantry awards, that the Government of Andhra Pradesh issued G.O.Ms.No.28, dt.2.2.1996 amending G.O.Ms.No.192, dt.26.8.1993 including category (xii) in Priority (3) as "Chief of Army Commendation Card" and that petitioner is therefore entitled for being considered under Priority (3).

Respondents 2 and 3 have filed separate counter affidavits opposing the Writ Petition. Second respondent – Zilla Sainik Welfare Officer, Ananthapur, in his counter affidavit has sated that the Government issued G.O.Ms.No.25, dt.17.1.1986 declining to include commendation certificate issued by Chief of Army Staff as gallantry award for monetary grant. The gallantry awards are published in Government of India Gazette, whereas the certificates issued by the respective Chiefs of Armed Forces are only commendation certificates issued under their signatures for distinguished services either in peace/field/operational areas and these commendation certificates are not included under gallantry awards list nor Gazetted. Therefore, they cannot be considered. As per the orders of the Government of Andhra Pradesh, 1% of the seats shall be reserved for children of armed forces personnel in medical admissions and admission under this quota is made among eligible qualified candidates in order of preference among four priorities. It is further stated that fourth respondent by communication dt.18.5.2004 forwarded application form for admission to professional courses for wards of defence personnel, and this has been followed by the Government of Andhra Pradesh scrupulously.

The third respondent, namely, Director of Sainik Welfare, while making averments which are similar to the counter averments of the second respondent further stated that though the Government of Andhra Pradesh issued G.O.Ms.No.28, dt.2.2.1996 amending earlier Government Orders including commendation card as a gallantry award, the same was not considered in view of the judgment of this Court in W.P.No.21292 of 1996. The third respondent asserts that the commendation card being non-gallantry award, cannot be included under Priority (3). The University, fifth respondent, has not filed any counter affidavit, but the learned Standing Counsel made submissions based on para-wise remarks.

Learned counsel for the petitioner, Sri M.Subrahmanyam, contends that as per the clarification issued by fourth respondent commendation certificate is made part of

gallantry awards and therefore petitioner's case has to be considered under Priority (3). He also submits that the Government of Andhra Pradesh has also amended G.O.Ms.No.192, dt.26.8.1993 vide their orders in G.O.Ms.No.28, dt.2.2.1996 directing to include category (xii) in Priority (3) i.e., "Chief of Army Commendation Card" and therefore it was wrong on the part of the University to refuse to consider the case of the petitioner under Priority (3). He further relies on the communication from fourth respondent to third respondent as well as the general instructions appended thereto in support of the contention that even the Central Government also included category 12 as "other award winners" and therefore the respondents are bound to accept the policy of the Central Government.

Learned Assistant Government Pleader for respondents 1 to 3, as well as learned Standing Counsel for the University made the following submissions. The commendation certificate is a non-gazetted conferment and cannot be treated on par with gallantry award which is issued by the President of India and which is duly published in gazette of India. The commendation certificate cannot be treated as commendation card which was directed to be included in G.O.Ms.No.28, dt.2.2.1996 and that such orders of the Government are not implemented. The petitioner cannot be treated as falling under Priority (3) and therefore she is not entitled for any consideration under the said category.

In the background facts and in the light of rival contentions, the only point that arises for consideration is whether the commendation certificates dt.15.8.1978 and 15.1.1981 can be treated as gallantry awards and whether the petitioner is entitled for consideration under Priority (3).

The Government of Andhra Pradesh issued orders directing the pattern of priorities for 1% seats for children of Ex-servicemen. Though G.O.Ms.No.192 initially ordered reservation of 2%, by subsequent amendment vide G.O.Ms.No.490 only 1% seats are ordered to be reserved. As per the G.O.Ms.No.192, dt.26.8.1993 the children of Ex-servicemen including the children of Boarder Security Force (BSF), and Central Reserve Police Force (CRPF) residing in Andhra Pradesh during the academic year 1993-94 onwards are eligible. The pattern of priorities is as follows.

PRIORITY (1) :- Children of Armed Forces Personnel, B.S.F. Personnel and C.R.P.F. Personnel killed in action;

PRIORITY (2) :- Children of Armed Forces Personnel, B.S.F. Personnel and C.R.P.F. Personnel disabled in action and invalidated out from service on medical grounds;

PRIORTIY (3) :- children of Armed Forces Personnel, B.S.F. Personnel, and C.R.P.F. Personnel who are in receipt of Gallantry Awards, the order of merit for consideration of the Gallantry Awards as given below:-

(a) Armed Forces Personnel (b) B.S.F./C.R.P.F. Personnel

i. Param Vir Chakra (i) President's Police and

ii. Ashoka Chakra Fire Services Medal for

iii. Sarvotham Yudh Seva Medal Gallantry.

iv. Mahavir Chakra (ii) President's Police

v. Kirti Chakra Medal for Gallantry

vi. Uttam Yudh Seva Medal (iii) Police Medal for

vii. Vir Chakra Gallantry

viii. Shourya Chakra

ix. Yuddha Seva Medal

x. Sena/Nao Sena/Vayu Sena Medal

xi. Mention in Despathces

PRIORITY (4) :- Children of other Ex-servicemen, Servicemen, B.S.F.Personnel and C.R.P.F. Personnel.

The G.O. contains Note (1) to Note (5) which are in the nature of rules. Unless and until the candidates fall in any of the priorities (1) to (4) they are not eligible for consideration under the army quota. For claiming reservation under army quota, candidates should submit documentary evidence in support of their claim from competent defence/B.S.F/C.R.P.F. authority, and if there is more than one candidate in a particular group in the order of priority, selection shall be based on the ranking at EAMCET. As seen from the priorities, Priority (1) (killed in action category) and Priority (2) (disabled in action category) do not present any difficulty. In Priority (3), which deals with personnel who are in receipt of gallantry award there is sub-classification which is made on sound principles of classification. The order of merit for consideration of the gallantry awards is also mentioned for (a) Armed Forces Personnel, and (b) B.S.F./C.R.P.F. personnel.

The submission that only the awards which are gazetted in the Gazette of India are included in the gallantry awards category cannot be accepted. As can be seen categories (i) to (x) speak of medals whereas category (xi) speaks of "mention in dispatches". No material is placed before this Court by respondents to show that even category –(xi) is gazetted. Insofar as notifying the awards mentioned in (i) to (x) in the gazette of India is concerned there is no dispute. There is also no dispute that even under Priority 3(b) which deals with B.S.F/C.R.P.F. personnel those awards mentioned therein are gazetted. Therefore, even when an award is conferred for gallantry by any of the Commanding Officers or respective Chiefs of three Wings of Army, they can also be considered as gallantry awards. This would not, however, solve the problem. The petitioner relies on the certificate dt.15.8.1978 by the then Chief of Army Staff commending the distinguished service by father of petitioner in cyclone hit area in November/December, 1977. This cannot be treated as gallantry award as a

gallantry award is normally issued to an army person who does not fall in priority (1) or (2), but nevertheless, has shown exemplary courage in the field. Insofar as the certificate dt.15.1.1981 issued by the Chief of Army Staff is concerned, it is in relation to discharge of duties of petitioner's father in June, 1980. It does not relate to any gallantry award. As the certificate itself shows that the Chief of Army Staff instructed for placing the citation in the service book of the petitioner's father, these two certificates cannot be considered as conferring any gallantry award on the petitioner's father. Further, the orders of the Government in G.O.Ms.No.28, dt.2.2.1996 refer to Chief of Army commendation card which was directed to be added as category (xii) of Priority (3). I fail to understand as to how the two certificates produced by the petitioner's father can be equated to commendation card. Therefore, petitioner cannot claim any consideration under the category of "Chief of Army Commendation Care".

It is not denied before this Court that the University is implementing reservation for children of Army Personnel in accordance with orders of the Government in G.O.Ms.No.192, dt.26.8.1993. As submitted by learned Assistant Government Pleader for Medical and Health, the orders of the Government in G.O.Ms.No.28, are not given effect to and therefore this Court cannot compel the University to treat the petitioner's father as recipient of gallantry award based on the two certificates relied on by him. The Government of Andhra Pradesh has fixed priorities and it is only the Government which can reframe these priorities. It is not a matter for this Court to reframe the priorities nor this Court can direct consideration of candidate under new category, which does not find place in relevant rules or Government Orders.

A reference may be made to **Chandigarh Administration v. Manpreet Singh** wherein the Supreme Court considered the question whether High Court can issue directions to change of priorities fixed by the Government. The Supreme Court held that while scrutinising the priorities and various categories of students eligible for army quota reservation High Court cannot assume the role or rule-making authority and cannot act as an appellate authority. It was held that when the rule is unreasonable, only course open is to strike down the rule and direct the rule framing authority to reframe it. But no direction can be issued which will tend to change the rule itself. In the said case High Court of Punjab and Haryana issued certain orders directing Chandigarh administration to give admission to children of army personnel contrary to rules made by the Government. The relevant observations made by the Supreme Court are as under:

> The entire reasoning of the High Court has been extracted by us hereinabove. It shows that absolutely no reason is assigned for granting the said direction. All that it says is that since Shauya Chakra is also awardable for gallantry and is placed immediately below Vir Chakra, the writ petitioner should be granted admission. If really the High Court was of the opinion that Shaurya Chakra is equivalent to Vir Chakra and should be treated on the same par as Vir Chakra then it should be spelt out the position also of Ashok Chakra and Kirti Chakra, which are above Shaurya Chakra. According to the Rules notified children/spouses of Ashok Chakra, Kirti Chakra and Shaurya Chakra awardees did not fall under category 1 nor categories 2 or 3. They would fall under

category 4 or category 5, as the case may be, depending upon whether their parent/spouse was an ex-service person or a serving person. There may have been other candidates who are the children/spouses of Shaurya Chakra awardes and for that matter, Ashok Chakra and Kirti Chakra awardees who may have obtained more marks than the writ petitioner (first respondent in SLP 16066 of 1991) but who did not claim a seat under category 1 nor were considered as such. They may not have stated that fact of their parent/spouse being a Ashok Chakra/Kirti Chakra/Shaurya Chakra awardee, nor filed the relevant citation, since it was not relevant as per the published Rules. Had the proper course been followed, all of them could have applied properly and could have been considered. By saying this we do not mean to say that the Rule is bad. We do not mean to say so at all. There may be good reasons for the Rule as published – or there may not be. That is not the issue. What we are saying is that if the High Court was of the opinion that all the gallantry awardees (including Ashok, Kirti and Shaurya Chakra) should be placed in category 1, it should have said so, struck down the category – and, may be, directed reframing of rule and admissions made on that basis.

The Supreme Court also observed as follows:

While this is not the place to delve into or detail the self-constraints to be observed by the Courts while exercising the jurisdiction under Article 226, one of them, which is relevant herein, is beyond dispute viz., while acting under Article 226, the High Court does not sit and /or act as an Appellate Authority over the orders/actions of the Subordinate Authorities/Tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the Government and several other authorities and Tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well-recognized bounds of its own jurisdiction.

A reference may also be made to **State of U.P. v. Johri Mal**.

Though G.O.Ms.No.192, dt.26.8.1993 is challenged as being contrary to policy of Government of India, the learned Counsel for petitioner did not urge any ground for invalidating said Government Order. Indeed, during the course of his submissions, learned Counsel also indicated that the point urged in Paragraph (8) of the Writ affidavit is not pressed. No other point is raised in the Writ Petition.

In the result, for the above reasons, the Writ Petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

05.10.2004

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Note: LR COPY BE MARKED.

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To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1 The Principal Secretary to Government, Education Department,

Government of A.P., Secretariat, Hyderabad.
2 Zilla Sainik Welfare officer, Govt. of A.P., Ananthapur.
3 The Director, Sainik Welfare Govt. of A.P., Department of Sainik

Welfare, MJ Road, Namaplly, Hyderabad.
4 Kendriya Sainik Board, Govt. of India, Ministry of Defence,

West Block-IV, Wing No.5, R.K.Puram, New Delhi.
5 The Vice Chancellor, NTR University of Health Sciences,

A.P., Vijayawada – 520 008.

6 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates Association Library, High Court

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8 8 LR copies.

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